



TO: The Honorable Members of the Environment Committee

FROM: Richard Hogan, Legislative and Regulatory Counsel

Re: S.B. 388

Date: March 11, 2010

Revisions to Section 10 of 22a-498 enable a stormwater authority created or designated by a municipality to develop a fee schedule payable by owners and operators of property within the authority's district. When establishing the fees, the authority may consider criteria including, for example, the area of the property containing impervious surfaces capable of generating stormwater runoff

The bill provides that a stormwater authority created pursuant to this section shall constitute a body politic and corporate with certain powers referred to throughout the section, including the power to establish a fee schedule and the power to recommend the imposition of a levy upon the taxable real property interests within the district, the revenue from which may be used to carry out the authority's powers.

This section of the bill also provides that any fee, fine or charge that is not paid in a timely manner to the authority shall be considered delinquent, subject to interest and constitute a lien upon the property served in the same manner as provided in Section 7-258 of the Connecticut General Statutes. Section 7-258 states that each such lien shall take precedence over all other liens and encumbrances except taxes. This new law also provides that the lien can be foreclosed against the property served in the same manner as a lien for taxes, and states that the lien continues until discharged or foreclosed by the authority "... without the necessity of filing certificates of continuation, but in no event for longer than ten years."

The language of the proposal allows the imposition of an unrecorded lien against real property that has a potential duration of ten years. The lien is effective when the payment is delinquent, and has a priority over any other interest in the property, even previously recorded mortgages or liens, and is second in priority only to a municipal tax lien. The superpriority of a lien is reserved for a limited number of municipal or state liens. Such treatment should not be extended to all specialized municipal charges, because of the disruption and uncertainty superpriority causes to the organized and customary rules of recording and conveyancing. In addition, the creation of a lien that can exist in unrecorded form for up to ten years will make the discovery of such liens difficult or impossible when performing normal due diligence for traditional real estate transfers.

Thank you.

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